Bail Slip

The Appellant/Accused namely Gopi was directed to be released on bail as per the order of this Court dated 23.8.2000 made in Crl.M.P.5055/2000 in Crl.A.645/2000.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.12.2007

CORAM

THE HONOURABLE MR. JUSTICE K.N.BASHA

Criminal Appeal No.645 of 2000

Gopi .. Appellant/Accused

Vs.

State rep. by
The Inspector of Police,
Krishnagiri Town Police Station,
Dharmapuri District.
(Crime No.562/95). .. Respondent/Complainant

Appeal against the Judgment dated 31.07.2000 made in S.C.No.66 of 1998 on the file of I Additional Sessions Judge, Krishnagiri.

For Appellant :: Mr.K.Asokan, SC
for Mr.N.Mohideen Basha
For Respondent :: Mr.J.C.Durai Raj,
Govt. Advocate (Crl. Side)

JUDGMENT

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A-1 is the appellant, who has come forward with this appeal challenging his conviction and sentence imposed by the learned First Additional Sessions Judge, Krishnagiri made in S.C.No.66 of 1998, dated 31.07.2000 convicting the appellant for the offence under Section 304 Part-II I.P.C, and sentencing him to undergo rigourous imprisonment for a period of four years and imposing a fine of Rs.500/- and in default, to undergo simple imprisonment for a period of three months.

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2. There are four accused in this case. A-1 has been charged for the offence under Section 304 Part-II I.P.C, and A-2 to A-4 have been charged for the offence under Section 302 r/w. 34 I.P.C. A-1 to A-4 have also been charged for the offence under Section 324 I.P.C. in respect of the injury said to have been caused to P.Ws.1 and 2. The learned trial Judge, disbelieving the prosecution case, acquitted A-2 to A-4 for the charges levelled against them and convicted and sentenced A-1, the appellant herein as stated above.

3. The prosecution version as unfolded during trial is as follows:-

(a) A-4 is the sister of the deceased Chinnaraj. A-3 is the husband of A-4. A-2 is the brother of A-3. A-1 is the son of A-3 and A-4. There was a civil suit pending between A-4 and the deceased Chinnaraj for a period of more than 11 years before a Civil Court in respect of the property dispute viz., a vacant site lying in front of the house of A-4. The civil case ended in favour of A-4 in the year 1994. The deceased was proposing to file an appeal against that judgment. Therefore, there were strained feelings between the deceased and the accused party.

(b) 15 days prior to the date of occurrence, the family of A-4 laid foundation for constructing a toilet in the disputed area. On the fateful day of occurrence i.e., on 29.04.1995 at about 9.30 a.m, the deceased along with his sons P.W.1, P.W.2 and one Solaiyan went to the vacant site of A-4 and questioned the conduct of A-4, constructing in the vacant site, which resulted in a wordy quarrel between A-4 and the deceased. At that time, A-4's daughter one Valli was said to have thrown a brick on the deceased and the deceased avoided the blow, which fell on A-4's head, causing bleeding injury. A-4 and her daughter-Valli raised hue and cry and thereafter, all the other accused viz., A-1 to A-3 rushed to the scene and each one of them fetched a Casuarina stick lying at the spot. A-1 beat the deceased on his head with Casuarina stick. The deceased fell down. While P.W.1 and others attempted to lift the deceased, A-1 beat P.W.1 on his left knee with Casuarina stick. A-2 beat P.W.1 on his right fore arm with Casuarina stick. A-3 beat P.W.2 on his left thigh with Casuarina stick. P.W.2 also sustained injury on his right index finger at the hands of A-4 with Casuarina stick. Thereafter, P.W.1, P.W.2 and Solaiyan were said to have attacked A-1 and A-2 with Casuarina stick and the accused ran away from the scene. P.W.1, P.W.2 and Solaiyan took the injured and the deceased to the Government Hospital, Krishnagiri.

(c) P.W.9-Dr.Rajagopalan attached to the Government Hospital at Krishnagiri examined the deceased on 29.04.1995 at 10.00 a.m. The Doctor was informed that the deceased sustained injury at the hands of five known persons with "Thonnai, Crow-bar, Knife and Stick". The deceased was found in an unconscious stage. The Doctor noted a

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lacerated injury on the forehead of the deceased. P.W.9 Doctor has also sent an intimation to the Police under Ex.P.7. He found the following injury on the deceased:-

"1.Lacerated wound of size 10 x 1 x 1 cm over the frontal region in the midline with swelling of size 6 x 5 x 2 cm."

Ex.P.6 is the Accident Register.

(d) On the same day, at about 10.05 a.m, P.W.9 Doctor examined A-1. A-1 stated that he was assaulted by five known persons with Stick and Aruval. P.W.9 found a lacerated injury on the lips of A-1. Ex.P.8 is the Wound Certificate. He found the following injuries:-

"1.Lacerated wound of size 1 x 1 x 1 x 2 c.m. in the lower lip.
2.Shaky upper left inciser.
3.Pain and tenderness in right side chest."

(e) On the same day and at the same time, P.W.9 examined A-2 and he gave Ex.P.9, Accident Register. He found the following injuries:-

"1.Lacerated wound of size 6 x 1 x 1 cm in left parietal region.
2.Contusion of size 3 x 2 cm in left arm.
3.Pain and tenderness in left leg.
4.Contusion of size 4 x 2 cm in back."

(f) On the same day, P.W.9 Doctor examined A-4, said to have been assaulted by five known persons with Aruval and Stick. He gave Ex.P.10, Accident Register. He found the following injuries:-

"1.Lacerated injury of size 2 x 1 x ½ cm over the left side of frontal region.
2.Contusion of size 3 x 2 cm over right arm."

(g) P.W.16, the Sub-Inspector of Police, received an intimation from the Government Hospital, Krishnagiri and went to the Hospital and enquired P.W.1. He recorded the statement of P.W.1 under Ex.P.1 at 10.30 a.m. Since the deceased was in a serious condition, on the advise of the Doctor, was taken to St. John's Hospital at Bangalore. P.W.16 returned to Police Station and on the basis of Ex.P.1, he registered a case in Crime No.562 of 1995 for an offence under Section 324 I.P.C. Ex.P.22 is the First Information Report.

(h) On the same day, P.W.16, the Sub-Inspector of Police also recorded the statement of A-3 at about 11.00 a.m. at the Government Hospital, Krishnagiri and registered a case in Crime No.563 of 1995 for an offence under Section 324 I.P.C. Ex.P.23 is the First Information Report.

(i) In respect of both the cases, viz., the report given by P.W.1 as well as the report given by A-3, P.W.16, Sub-Inspector of Police took up investigation in this case, went to the scene of

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occurrence and prepared Ex.P.2 Observation Mahazar and Ex.P.24 Rough Sketch. He recovered M.Os.4 to 10-Casuarina sticks and M.O.11-broken brick under Ex.P.3 mahazar from the scene of occurrence. He also recovered M.O.13-Saree, M.O.14-Jacket and M.O.15-inner garment from one Valli under Ex.P.4 mahazar. He examined P.Ws.1 to 11 and recorded their statements. At 4.30 p.m, he recovered bloodstained clothes produced by A-3 and A-4's daughter Valli. Thereafter, he examined some more witnesses. As A-1 to A-3 were taking treatment, he had not arrested them.

(j) On 30.04.1995 at about 12.20 p.m, the said Chinnaraj died. The Doctor at St. John's Hospital, Bangalore sent Ex.P.19 death intimation to the Koramangala Police.

(k) P.W.14, the Sub-Inspector of Police attached to Koramangala Police Station stated that he received Ex.P.19 intimation on 01.05.1995 about the death of Chinnaraj from St. Johin's Hospital and thereafter, on the basis of that intimation, he registered a case in U.D.R.No.46/1995 under Section 174 of the Code of Criminal Procedure. Ex.P.20 is the First Information Report. He came to know that already a case was registered by Krishnagiri Town Police Station in respect of the death of the deceased.

(l) P.W.15, the Head Constable attached to Koramangala Police Station, went to St. John's Hospital on 01.05.1995 and conducted inquest over the dead body of the deceased. Ex.P.21 is the inquest report. He has requested for conducting Post-mortem.

(m) P.W.13, Dr.Thirunavukkarasu, who was working as Professor in Forensic Science and Medicine Department at Victoria Government Hospital, Bangalore, conducted Post-mortem on the dead body of the deceased on 02.05.1995 at about 9.35 a.m and he found the following injuries:-

> "1.Sutured wound present over top of head, situated 7 cm above glabella measuring 9 cm in length, obliquely placed.
> 2.Both eyes contused.
> 3.Abrasion present over top of right shoulder measuring 3 cm x 3 cm."

Ex.P.18 is the Post-mortem certificate. The Doctor was of the opinion that the death occurred due to COMA, as a result of Head injuries sustained by the deceased.

(n) P.W.10 Doctor examined P.W.1 on 06.05.1995 at about 11.45 a.m. He found the following injuries:-

"1.A scabbed abrasion on the right elbow.
2.C/o. Pain on the left knee normal mobility."
Ex.P.11 is the wound certificate.

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(o) On the same day and at the same time, P.W.10 Doctor also examined P.W.2 and he found the following injuries:-

"1. 3 cm x 2 cm lacerated injury on the right fore arm. (Healing)
2. Healed abrasion on the left thigh.
3. Healed abrasion on the right lower leg."
Ex.P.12 is the wound certificate.

(p) P.W.16 received the case records from Koramangala Police and altered the First Information Report in Cr.No.562/95 under Section 324 I.P.C, into one under Section 302 I.P.C, and forwarded Ex.P.26 Express Report to the leaned Judicial Magistrate, Krishnagiri and to the Inspector of Police, Krishnagiri.

(q) P.W.17, the Deputy Superintendent of Police, took up further investigation in this case and verified the materials collected from P.W.16 including the statement of witnesses recorded by him. On 06.05.1995 at about 6.30 a.m, he arrested A-2 and A-3 at Krishnagiri five road junction and thereafter, remanded them to judicial custody. He has sent the injured P.Ws.1 and 2 with a memo to the Government Hospital, Krishnagiri for medical examination. He has also examined the other witnesses and sent the material objects for chemical examination through the Court. He has received Ex.P.18 Post-mortem certificate. He also received Ex.P.27, the document relating to the admission of the deceased at St. John's Hospital. He examined P.W.9-Dr.Rajagopalan and P.W.10-Dr.Masillamani. P.W.17 referred the case registered in Crime No.563/1995 in respect of the report given by A-1 as "mistake of fact" on 10.12.1995 as per his final report Ex.P.28.

(r) After receiving Ex.P.15 chemical examination report, and after completion of the investigation, field a charge sheet against the accused for offences under Sections 302, 324, and 323 r/w 34 I.P.C, on 10.12.1995.

4. When the accused were questioned under Section 313 Cr.P.C. in respect of the incriminating materials appearing against them, each of the accused have come forward with the version of total denial and they have stated that they have been falsely implicated in this case. They have not chosen to examine any witness on their side.

5. Mr.K.Asokan, the learned Senior Counsel appearing for the appellant vehemently contended that the prosecution has miserably failed to prove its case by adducing clear and cogent evidence. He made the following submissions:-

The admitted version of the prosecution is that only the prosecution party are the aggressors. As A-4 was doing construction work in her vacant site, as she has succeeded in the Civil dispute pending between herself and her brother-the deceased and only the deceased along with his sons P.Ws.1, 2 and another son Solaiyan questioned the conduct of A-4, which resulted in a wordy quarrel and ultimately, A-4 sustained injury.

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6. Only on hearing the hue and cry of A-4 and her daughter Valli, the other accused viz., A-1 to A-3 rushed to the scene and the fact remains that A-1, A-2 and A-4 also sustained injuries. But there is no proper explanation from the prosecution for the injury sustained by A-1, A-2 and A-4 and as such, the prosecution has not come forward with the true version and the origin of the occurrence has been suppressed.

7.Even assuming that A-1 is said to have attacked the deceased, it is quite clear from the evidence adduced on the side of prosecution that as A-1 is entitled to the right of the private defence in respect of mother A-4 as well as in respect of in their property and only while exercising his right of private defence, A-1 must have attacked the deceased and has given a single blow and that too, with the Casuarina stick lying on the spot and as such, he has not exceeded the right of private defence.

8. Mr.J.C.Durai Raj, the learned Government Advocate (Criminal side) contended that the prosecution has proved its case by adducing clear and acceptable evidence through P.Ws.1 to 3. It is submitted that P.Ws.1 and 2 are also injured witnesses and there is no infirmity in their evidence in so far as the prosecution relating to the overt act alleged against A-1, the appellant herein. It is submitted that P.Ws.1 to 3 have categorically stated that A-1 beat the deceased with Casuarina stick on his head and P.W.13, Doctor, who has conducted Post-mortem, also found corresponding injury and therefore, the evidence of P.Ws.1 to 3 is clearly corroborated by the medical evidence. Therefore, it is submitted that the prosecution has proved its case in respect of A-1, the appellant herein.

9. I have carefully considered the rival contentions put forward by either side and also thoroughly scrutinized the entire materials available on record and perused the impugned judgment of conviction.

10. The prosecution, in this case, has heavily placed reliance on the evidence of P.Ws.1 to 3. The other witnesses viz., P.Ws.4 to 7 have turned hostile. The fact remains that P.Ws.1 and 2 are the sons of the deceased and P.W3 is the sister's son of the deceased and as such, all the three witnesses are interested witnesses. Therefore, this Court has to scrutinize their evidence with great care and caution.

11. It is the admitted case of the prosecution that there was a dispute between the deceased and A-4 and both of them are brother and sister and a case was pending before the Civil Court in respect of the vacant site lying in front of the house of A-4. It is also not disputed by the prosecution that A-4 succeeded in the Civil suit and as such, she is having right and title over the disputed property. It is also the version of the prosecution that on the

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fateful day of occurrence, A-4 was doing construction work in respect of toilet, as already foundation was laid and construction work was going on and on the date of occurrence and at the time of occurrence, the deceased along with his sons P.W.1, P.W.2 and Solaiyan, went to the land of A-4 and quarrelled with her. The case of the prosecution is that the quarrel was going on for more than half-an-hour. Though it is the version of the prosecution that at that time one Valli, the daughter of A-4 came there and thrown a brick stone on the deceased, while the deceased avoided that blow, the said stone fell on the head of A-4, resulting in a bleeding injury, it is pertinent to note that admittedly, A-4 sustained the bleeding injury on her vital part of the body viz., on the head, the vulnerable portion of the body and P.W.9 Doctor found a lacerated injury on the left side head and a contusion on the right hand. The fact remains that there is absolutely no explanation for the injury sustained by A-4 on her right hand. P.W.9 Doctor has also categorically admitted in his cross-examination that the first injury viz., a lacerated wound found on the head of A-4 could have been caused by a handle of "Aruval". The undisputed fact remains that the prosecution has not elicited any answer from P.W.9 Doctor that A-4 could have sustained an injury on her head viz., the first injury as per Ex.P.10, wound certificate, on the head due to hit by a brick Stone. Only the defence has elicited in the Cross-examination to the effect that A-4 could have sustained injury by the handle portion of "Aruval". Therefore, the nature of injury found on A-4's head clearly shows that A-4 could not have sustained such injury due to the attack on her by M.O.11-brick stone. It is also pertinent to note that M.O.11-brick itself is half broken and further, it is not identified to be the same stone. Therefore, this Court is of the considered view that the prosecution has not at all properly explained the injury sustained by A-4. It is also seen that even as per the prosecution version, only after A-4 sustaining bleeding injury and only after A-4 and her daughter raised hue and cry, the other accused viz., A-1 to A-3 rushed to the scene of occurrence and only thereafter, they attacked the deceased and P.Ws.1 and 2.

12. At this juncture, it is pertinent to note that apart from A-4, A-1 and A-2 also sustained injuries. A-2 has sustained a lacerated wound on his head. A-1 also sustained a lacerated would on his lips. There is no proper explanation from the prosecution in respect of the injury sustained by A-1 and A-2. P.W.1 made a vain attempt to explain the injuries on A-1 and A-2 to the effect that all of them viz., P.Ws.1 to 3 attacked A-1 and A-2 with Casuarina stick. P.W.2 on the other hand, made a vague statement to the effect that all the accused attacked the deceased with Casuarina stick. P.W.3 has not at all whispered a word whether A-1 and A-2 sustained injury at all. Therefore, it is crystal clear that the prosecution has not come forward with the true version and in view of the non-explanation of the injury sustained by the accused, it is very clear that the occurrence could not have taken place in the manner as alleged by the prosecution.

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13.As already pointed out that A-4 sustained an injury on the vital part viz., on her head, the explanation offered by the prosecution to the effect that the Stone was thrown by A-4's daughter, Valli and the same fell on A-4's head, on the face of it, is unbelievable and unacceptable. It is seen that the prosecution party viz., the deceased along with his sons viz., P.Ws.1, 2, Solaiyan and P.W.3 went to the land of A-4. Admittedly, A-4 succeeded in the Civil dispute pending between herself and the deceased and she was present only in her land and doing construction work and the prosecution party quarrelled with her, which makes it crystal clear that only the prosecution party are the aggressors. Even as per the prosecution version, only after hearing the hue and cry of A-4 and her daughter Valli, the other accused rushed to the scene of occurrence and they have taken the Casuarina stick, which was lying on the spot and A-1 is said to have given a single blow on the head of the deceased.

14. At this juncture, it is also relevant to note that the Investigating Agency has also not properly investigated the complaint given by the accused, which was registered as per Ex.P.23 First Information Report. It is also relevant to note that even the Investigating Officer P.W.16 has categorically admitted that accused 1 to 3 have been admitted in the hospital and they were undergoing treatment. The fact remains that A-1 to A-3 went to the hospital at the earliest point of time, more or less, at the same time the deceased was admitted at the Government Hospital, Krishnagiri, whereas, P.Ws.1 and 2, the so-called injured witnesses, have taken treatment long after the time i.e., only on 06.05.1995.

15. This Court is of the considered view that the possibility of A-1 exercising his right of private defence in respect of his mother A-4 and the property cannot be ruled out. It is seen from the materials available on record, that the accused has not made any specific plea in respect of the private defence of A-4 and the property. However, it is well settled that the plea of private defence need not be specifically raised and the Courts may only see as to whether the plea of exercising private defence was probabilised in facts and circumstances.

16. The Honourable Apex court in SURENDRA Vs STATE OF MAHARASHTRA reported in 2006 AIR SCW 4341 has held that plea of private defence need not be specifically raised and the courts may only see as to whether plea of exercise of private defence was probable in facts and circumstances of case.

17. Therefore, this Court has no hesitation to hold that the accused could have caused a single blow on the head of the deceased, only while exercising his right of private defence which unfortunately proved to be fatal. By no stretch of imagination, it could be stated that A-1 has exceeded his right of private defence, as it is admitted in the version of the prosecution that A-1 has given a single blow and that too, he has fetched a weapon viz.,

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Casuarina stick lying on the spot. He has not given any further blow. Therefore, the inevitable conclusion of this Court is that the conviction and sentence imposed on the appellant/first accused by the learned trial Judge is liable to be set aside.

18. Therefore, for the above said reasons, the prosecution has miserably failed to establish its case in all aspects. As a result, this appeal is allowed and the conviction and sentence passed by the trial Court are set aside. The appellant/A-1 is acquitted of the charge levelled against him. The bail bond, if any, executed by him shall stand cancelled. The fine amount, if any, paid by the appellant/A-1 shall be refunded to him.

sd/-
Asst.Registrar

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Sub Asst.Registrar

jrl

To

1. The Judicial Magistrate, Krishnagiri.
2. -do- Thro' Chief Judicial Magistrate Dharmapuri.
3. The First Additional Sessions Judge,
   Krishnagiri.
4. -do- Thro' Principal Sessions Judge, Dharmapuri.
5. The District Collector, Dharmapuri.
6. The Director General of Police, Chennai.
7. The Public Prosecutor,
   High Court, Madras.
8. The Superintendent, Central Prison, Vellore.
9. The Inspector of Police,
   Krishnagiri Town Police Station,
   Dharmapuri District.

+1 cc To Mr.N.Mohideen Basha, Advocate, SR.73775.

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